



## 40 CFR Part 52

[EPA-R03-OAR-2020-0574; FRL-8730-02-R3]

### Approval and Promulgation of Air Quality Implementation Plans;

### District of Columbia; Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision formally submitted by the District of Columbia Department of Energy and the Environment (DOEE). The revision provides the District's certification that its existing emissions statement program satisfies the emissions statement requirements of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standard (NAAQS). EPA is approving the District's emissions statement program certification for the 2015 ozone NAAQS as a SIP revision in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0574. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On March 11, 2021 (86 FR 13843), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia. In the NPRM, EPA proposed approval of the District's certification that the District's emissions statement regulation meets the emissions statement requirement of section 182(a)(3)(B) of the CAA for the 2015 ozone NAAQS. The formal SIP revision was submitted by the District of Columbia, through the Department of Energy and the Environment (DOEE), on June 4, 2020.

### **II. Summary of SIP Revision and EPA Analysis**

On June 4, 2020, the District, through DOEE, submitted as a formal SIP revision, a statement certifying that the District's existing SIP-approved emissions statement program covers the District's portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS and is at least as stringent as the requirements of CAA section 182(a)(3)(B). In its submittal, the District states that 20 District of Columbia Municipal Regulations (DCMR) section 500.9 contains emissions reporting requirements consistent with CAA section 182(a)(3)(B)(i), and that 20 DCMR section 500.9 is approved into the District's SIP. See 40 CFR 52.2420(c). EPA first approved the District's emissions statements requirements, now found at 20 DCMR section 500.9, into the District's SIP on May 26, 1995 (60 FR 27944).<sup>1</sup> See also 40 CFR 52.470.

EPA's review of the District's submittal finds that the District's existing, SIP-approved

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<sup>1</sup> 20 DCMR sections 500.4 through 500.6 were also approved into the District's SIP on January 26, 1995 (60 FR 5134) and October 27, 1999 (64 FR 57777), respectively. These provisions concern reporting requirements related to the transfer of gasoline products.

emissions statement program at 20 DCMR section 500.9 satisfies the emission statement requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. The District's regulation requires the owner of any stationary source located in the District that emits 25 tons per year (tpy) or more of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) to submit an emissions statement to the Mayor by April 15 of each year for the emissions discharged during the previous calendar year. Emissions statements are required to be prepared and submitted in accordance with 20 DCMR section 500.9.

These emissions statements are required to be submitted annually for the previous calendar year and, at a minimum, must contain the following: (1) certification that the information in the statement is accurate to the best knowledge of the individual certifying the statement as well as the certifying individual's name and contact information; (2) source identification information including name, physical location, mailing address of the facility, latitude and longitude, and standard industrial classification code(s); (3) operating information including percentage annual throughput by season, days per week on the normal operating schedule, hours per day during the normal operating schedule, and hours per year during the normal operating schedule; (4) process rate data including annual process rate and peak ozone season daily process rate; (5) control equipment information; and (6) emissions information including, but not limited to, estimated actual emissions of NO<sub>x</sub> and VOC in tpy and pounds per typical ozone season day. These reporting requirements in 20 DCMR section 500.9 meet the requirements of CAA section 182(a)(3)(B)(i).

As allowed by CAA section 182(a)(3)(B)(ii), the District has waived the emissions reporting requirement for stationary sources emitting less than 25 tpy of NO<sub>x</sub> or VOCs because the District includes these emissions in reports to EPA. CAA section 182(a)(3)(B)(ii) allows the State to waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of VOC or NO<sub>x</sub> if the State, in its submissions under subparagraphs (1) or (3)(A), provides an inventory of emissions from such class or category of

sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

As noted in the District's June 4, 2020 submittal, pursuant to the Air Emissions Reporting Requirements rule at 40 CFR part 51, the District is required to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System (EIS), and that sources emitting less than 25 tpy of NO<sub>x</sub> or VOC are included in these inventories as area sources. The submission also notes that emissions from these sources are calculated using emission factors approved by the Administrator. These small stationary sources are therefore addressed in accordance with CAA section 182(a)(3)(B)(ii).

Therefore, EPA has determined that the District's existing emissions statement program, as set forth at 20 DCMR section 500.9, which is currently in the District's SIP, and the District's reporting for sources emitting less than 25 tpy of NO<sub>x</sub> or VOC, meet the emissions statement requirements in CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. EPA is approving, as a SIP revision, the District's June 4, 2020 emissions statement program certification as meeting the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.

Other specific requirements of DOEE's June 4, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

### **III. Final Action**

EPA is approving, as a SIP revision, the District of Columbia's June 4, 2020 emissions statement certification for the 2015 ozone NAAQS as approvable under CAA section 182(a)(3)(B). The District's emissions statement certification certifies that the District's existing SIP-approved emissions statement program under 20 DCMR section 500.9 satisfies the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.

### **IV. Statutory and Executive Order Reviews**

#### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the District's emissions statement certification for the 2015 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 5, 2021

Diana Esher,  
Acting Regional Administrator,  
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart J—District of Columbia**

2. In § 52.470, the table in paragraph (e) is amended by adding an entry for “Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

#### **§ 52.470 Identification of plan.**

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(e)\* \* \*

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
* * *	* *	* *	*	
Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard	The District of Columbia portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS (i.e., the District of Columbia	6/4/20	<b>[insert date of publication in the Federal Register], [insert Federal Register citation]</b>	Certification that the District’s previously SIP-approved regulations at 20 DCMR section 500.9 meet the emissions statement requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.